



# DOES THE LEGAL FRAMEWORK GOVERNING EMERGING INSTITUTIONS IN ALGERIA DIFFER FROM THAT OF TRADITIONAL PROJECTS?

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## ABSTRACT

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Emerging institutions have garnered significant worldwide attention due to their unique characteristics and pivotal roles in fostering economic development. These institutions represent innovative economic models that have gained prominence in numerous countries, aiming to nurture emerging ventures and empower innovators.

Like many nations, Algeria has adopted an alternative economic approach to achieve sustainable development and elevate the national economy. This approach prioritizes fostering creativity and innovation, enabling economic diversification, and encouraging the establishing of emerging institutions. Algeria aims to drive the desired development and investment momentum by expanding business opportunities within a sound economic environment. This strategy is a viable alternative to wealth creation and economic expansion beyond the hydrocarbon sector and traditional economic rents.

Hence, Algeria issued an arsenal of legal texts to encourage these institutions and open the door for those with innovative ideas to implement their ideas on the ground. Therefore, supporting emerging enterprises has become a priority for Algerian economic decision-makers to contribute to advancing development and enhancing local production.

## INTRODUCTION

The interest of decision-makers has recently emerged in emerging institutions and business incubators, as they are the main axis for advancing development in Algeria and moving away from the oil-rentier economy that has been relied upon for decades. Perhaps this interest stems from the Algerian state's conviction that there is no escape from creating a new economic model based on Technology and knowledge and giving young people an opportunity to embody their ideas on the ground, realizing that emerging institutions are the engine of tomorrow's economy.

Hence, the Algerian state attached great importance to emerging institutions, as it allocated to the latter an entire ministry called the Ministry of Knowledge Economy and Emerging and Small Enterprises. It also harnessed all circumstances and wrote laws that would support institutions and open the way for young people to enter the world of investment through the new investment law after... Several amendments touched on its contents, including facilities that would stimulate those wishing to establish emerging, small and medium enterprises.

Several regulatory decrees were also published in 2020 related to emerging institutions, to be the regulatory framework that sets out the methods, conditions, and procedures followed regarding them, as well as everything that benefits the level of the tool of these institutions, to achieve the economic goals set by the state.

Given the importance of the topic, we find ourselves faced with several questions, including:

### **What is the concept of emerging enterprises? What is the legal framework for emerging enterprises?**

To answer these questions, which were one of the motivations for choosing this topic, we addressed the nature of emerging institutions in Algerian law (first axis) and the legal texts regulating emerging institutions (second axis).

## 1. THE NATURE OF THE EMERGING INSTITUTIONS IN ALGERIAN LAW

The term "emerging enterprises" has often been used in academic circles and the world of fi-

nance and business without agreeing on a single definition due to its connection to law, economics, and business activities. Hence, the definitions have varied.

### **1.1. The jurisprudential and legal definition of emerging institutions**

Before we discuss the definition of emerging institutions under Algerian legislation, we must address the definition of emerging institutions in general

#### **1.1.1. General definition of emerging enterprises**

In the English lexicon, the term "startup" refers to a small project that has just begun. The word itself originates from a combination of "start", indicating the initiation of a project, and "up", signifying upward growth and expansion. This term gained widespread usage immediately following World War II, coinciding with the emergence of venture capital firms (venture capital). Today, the term is recognized by dictionaries like Le Robert in French, defining startups as young, innovative companies operating in the sector of modern technologies (la Rousse).

Further elaborating on the concept, Paul Graham, founder of the renowned startup accelerator Y Combinator, defines the startup in his essay on growth as "a company designed to grow fast". Its business is to create and market new technology.

Some define a startup organization as: "an entity designed to create a new product or service under conditions of extreme uncertainty".<sup>1</sup>

It has also been defined as: "A small, newly established project that aims to innovate and develop a new product or service in any sector. This type of enterprise is characterized by high degrees of risk".<sup>2</sup>

Through the previous definitions, it can be said that emerging institutions are newly established

<sup>1</sup> Graham, P., Want to start up? Get funded by Y Combinator, available at <https://paulgraham.com/start.html> [Last access 03/16/2024].

<sup>2</sup> Othmania, A., Belabed, M., Emerging Institutions in Algeria between Organization Efforts and Support Structures, Journal of Annals in Economic Sciences, Bashar University, Volume 7, Issue 3, p. 369.

institutions that started from the idea of a project, seeking to produce goods and services in the market, and have the potential for very rapid growth and may be active in any sector, but mostly in the field of modern technology, and they take risks in exchange for achieving. Strong and rapid growth with the potential for huge profits if successful.<sup>3</sup>

### *1. 1.2. Legal definition of emerging enterprises*

It is common knowledge that the legislator does not usually go into providing definitions of legal terms and has no business doing so, leaving jurisprudence and specialists in the field to undertake the appropriate definition of these terms.

However, in this matter, the legislator addressed the definition of the emerging innovative institution in the text of Article 6 of Law No. 15-21, which includes the directive law on scientific research and technological development.<sup>4</sup> The legislator also tried to refer to the emerging institution in several laws, including:

1. Law No. 17-02 relates to the guiding law for small and medium-sized enterprises. The provisions of this law referred to emerging enterprises as a promising sector that must be developed and promoted, as Article 21 stipulates that: "Loan guarantee funds and launch funds shall be established by the Ministry in charge of small and medium-sized enterprises under the applicable regulation". "To guarantee loans to small and medium enterprises and promote emerging enterprises within the framework of innovative projects".<sup>5</sup>
2. Law No. 19-14 containing the Finance Law of 2020 Article 69 stipulates: "Emerging companies are exempted from the tax on corporate profits and the value-added tax for commercial transactions".
3. Executive Decree No. 20-254. It includes establishing a national committee to grant the

label "emerging enterprise", "innovative project", and "business incubator", and defining its tasks, composition, and functioning.<sup>6</sup>

Through this decree, we find that the Algerian legislator no longer has a precise definition, but rather specified in Article 11 of the aforementioned executive decree in Chapter Four, entitled: "Conditions for granting a mark" to an emerging institution, a set of standards, including but not limited to, as follows:

- The institution is subject to Algerian law;
- The institution must not exceed eight (08) years old;
- The organization's business model should be based on innovative products, services, business models, or any idea;
- The annual turnover must not exceed the amount determined by the National Committee;
- The company's capital must be owned at least 50%, by natural persons or investment funds accredited by other institutions that have the "Emerging Institution" label;
- The growth potential of the enterprise must be large enough;
- The number of workers must not exceed 250 workers.

From the above, we note that the Algerian legislator relied on several standards while neglecting several basic standards, such as the technology standard among the criteria for classifying emerging institutions, and this is contrary to what is approved in most countries of the world, and the risk standard is that these institutions start from nothing to risk either success or failure.

## **1.2. Characteristics and importance of emerging institutions**

### *1.2. 1. Characteristics of emerging institutions*

Emerging institutions are distinguished by several characteristics that distinguish them from

3 Blood, O. (2022). The legal framework for emerging institutions in Algeria – Obstacles and prospects, *Les Cahiers du Mecas* magazine, Volume 18, Issue 2, p. 754.

4 Article 6 of Law No. 15-21, (2015, December 30), containing the Directive Law on Scientific Research and Technological Development, 2015, No. 71.

5 Law No. 17-02, (2017, January 11), relating to the Directive Law for Small and Medium Enterprises, c. R Issue 02.

6 Executive Decree No. 20-245 (2020, September 15), includes the establishment of a national committee to grant the label "emerging enterprise", "innovative project", and "business incubator", and determine its tasks, composition, and functioning, c. R. Issue 55.

other institutions, which can be summarized in the following points:

- New companies are characterized by being young institutions, and they have two options: either to develop and transform into successful institutions or close their doors and lose;
- The speed of growth of emerging enterprises through the ability to quickly advance their business, i.e. increase production and sales without increasing costs;
- Start-ups rely on technology to grow, advance, and find funding through online platforms, and by winning help and support from business incubators.

The difference between emerging institutions and classic institutions:

Being a start-up is a temporary situation, either because the business model is not achieved, and therefore the start-up fails or disappears, or because it succeeds, is absorbed or transformed into a classic or almost traditional institution, and the transition from a large start-up expresses the moment in which it is decided to grow. That is the future of the emerging enterprise. Therefore, the most important element that makes the difference between emerging and classic enterprises is significant growth.<sup>7</sup>

### *1.2.2. The importance of startups*

Emerging organizations derive their importance from being able to achieve the following:

- Contributing to the gross domestic product and thus diversifying the country's economic resources. It also enables the optimal exploitation of available local resources;
- Meeting the requirements of major institutions for semi-finished products and others;
- Creating wealth by relying on modern technologies and the ability to innovate and create;

- Ease of achieving innovative methods in emerging institutions;
- Effective contribution to creating new job opportunities and increasing competitiveness;
- Excellence in quick decision-making and automatic flexibility, as well as the willingness to take risks and develop team spirit, makes it capable of absorbing economic crises with ease and smoothness.<sup>8</sup>

## 2. LEGAL TEXTS GOVERNING EMERGING ENTERPRISES

Building any economic project, regardless of its nature or effectiveness, will not be successful in the absence of the legal and regulatory basis accompanying it. The same applies to emerging institutions adopted by the Algerian state as an alternative economic model for the advancement of the national economy.

From this standpoint, the issuance of texts regulating emerging institutions is considered the first initiative by the state, to embody its efforts to encourage this type of institutions, and in recognition of the necessity to organize them and determining their work, functioning, and methods for their promotion.

### 2.1. Executive Decree No. 20-254

- This decree is the legal basis for organizing the work of emerging institutions by defining their tasks and composition by creating a central committee mission of a national nature through which institutions are granted either the label of a business incubator, an innovative project, or an emerging institution, to develop and promote them and granting them investment opportunities and prospects, according to what is stated in the text of Article 1 thereof.

7 Beljazia, O., Bouznit, K., Boukrit, F. (2024). Artificial Intelligence and emerging institutions in Algeria: a conceptual introduction, an intervention delivered at the activities of the National Forum on the applications of artificial intelligence in emerging institutions—a field study and pioneering experiences, Djelfa, p. 14, available at: [https://www.researchgate.net/publication/378549836\\_aldhka\\_alastnay\\_walmwssat\\_alnashyt\\_fy\\_aljzayr\\_mdkhl\\_mfahymy](https://www.researchgate.net/publication/378549836_aldhka_alastnay_walmwssat_alnashyt_fy_aljzayr_mdkhl_mfahymy).

8 Zaidi, H., Abdelaoui, M. (2023). Emerging Institutions in Algeria, An Analytical View of Legal Frameworks and Economic Impacts, Journal of Legal Studies, Volume 9, Issue 3, p. 6.

- We cannot fail to point out the conditions for awarding each of the previous marks through the following:

### *2.1.1. Conditions for granting the "Emerging Enterprise" label*

In addition to the previous conditions mentioned in the previous definition of emerging enterprises, the applicant for this mark must register in the national electronic portal for emerging enterprises and attach the following documents:

- A copy of the commercial register and tax and statistical identification card;
- A copy of the company's bylaws;
- CNAS Certificate of Affiliation with a List of Employees Attached;
- Certificate of Affiliation for Non-Employees CASNOS;
- A copy of the financial statements for the current year;
- A detailed business plan of the organization.
- Scientific and technical qualifications and experience of the organization's users;
- Where applicable, every intellectual property document and any award or reward obtained.<sup>9</sup>

It should also be noted that the committee is responsible for responding after studying the file within a maximum period of 30 days starting from the date of application. The deadlines will stop if the file is incomplete, provided that the requesting party completes the file within 15 days starting from the date of notification by the National Committee.

If the committee rejects the application, it must justify this and notify the applicant electronically. The committee may reconsider the application based on a justified request from the institution, and it will be notified of the final response within a period not exceeding thirty days from the date of its submission.

Finally, if the committee accepts the application, the Emerging Enterprise Mark is granted for a period of 4 years, renewable once, based on a decision published on the main portal for emerg-

<sup>9</sup> Article 12 of Executive Decree No. 20-254 includes the establishment of a national committee to grant the label "emerging enterprise," "innovative project," and "business incubator," and determine its tasks, composition, and functioning. *Ibid.*

ing enterprises, and renewal takes the same procedures.<sup>10</sup>

### *2.1.2. Conditions for granting the "Innovative Project" label*

Every natural person or group of natural persons can request the "Innovative Project" mark on any project related to innovation, and must register in the National Portal for Start-ups and submit the following documents:

- A presentation about the project and its innovations;
- Elements that demonstrate the great potential for economic growth;
- Scientific and/or technical qualifications and experience of the team in charge of the project;
- Where applicable, every intellectual property document and any award or reward obtained.

Every application to obtain the "Innovative Project" label will be responded to within a maximum period of 30 days from the date of its submission.

The "Innovative Project" label is granted to a natural person or group of natural persons, for a period of two years, renewable twice according to the same forms. Decisions to grant the "Innovative Project" label must be published in the national electronic portal for emerging enterprises.<sup>11</sup>

### *2.1.3. Conditions for granting the "Business Incubator" label*

Every structure affiliated with the public sector, the private sector, or a partnership between them, is eligible to obtain the "business incubator" label, which proposes support for emerging enterprises and innovative project holders in terms of accommodation, training, counseling, and financing. Applications are submitted through the electronic portal accompanied by the following documents:

<sup>10</sup> Articles 13, 14, and 15 of Executive Decree No. 20-254 include the establishment of a national committee to grant the label "emerging enterprise," "innovative project," and "business incubator," and determine its tasks, composition, and functioning. *Ibid.*

<sup>11</sup> Articles 16 to 20 of Executive Decree No. 20-254 include the establishment of a national committee to grant the label "emerging enterprise," "innovative project," and "business incubator," and determine its tasks, composition, and functioning. *Ibid.*

- A detailed setup plan for the business incubator;
- A list of the equipment you have at the disposal of incubated start-ups;
- Providing various training and supervision programs proposed by the business incubator;
- CV of business incubator users, constituents, and facilitators;
- List of startups that have been incubated, if any.

Article 23 of Executive Decree No. 20-254 mentioned above also specified the structures for specific documents that must be added when submitting the file, which are:

- A copy of the commercial register and tax and statistical identification card;
- Certificate of the company by-laws;
- CNAS Certificate of Affiliation with a List of Employees Attached;
- Certificate of enrollment in the National Social Insurance Fund for non-wage workers CASNOS;
- A copy of the financial statements for the current year.

As for the procedures for obtaining an incubator institution mark, they do not differ from the procedures for obtaining a start-up institution mark, as the application is made through the electronic portal accompanied by specific documents following the legal texts. The committee is responsible for studying them and responding to the application within a maximum of 30 days. If the committee accepts the application The committee grants the business incubator mark to the structure for 5 years, renewable according to the same forms. The committee publishes the decision to grant the mark on the national electronic portal.<sup>12</sup>

## 2.2. Executive Decree No. 20-356 of November 30, 2020, which includes the establishment of an institution for the promotion and management of support structures for emerging enterprises and defines its tasks, organization and operation

Executive Decree No. 20-356 relating to the establishment of an institution for the promotion and management of support structures for emerging enterprises and defining its tasks, organization, and functioning is a complementary decree to the previous decree, as after the Algerian legislator gave the concept of emerging enterprises and mechanisms for incubating them, as well as the conditions for obtaining the emerging enterprise mark, the Algerian legislator comes in; the decree announces the establishment of an institution whose mission is to promote and manage these structures.

### 2.2. 1. Definition of the Agency for the Promotion and Management of Support Structures for Emerging Enterprises

The institution was created for the promotion and management of support structures for emerging institutions under Executive Decree No. 20-356, which was named "Allegria Vantur", as it is considered a public institution of a commercial and industrial nature. In its relations with the state, it is subject to administrative law, and in its relations with third parties, it is subject to commercial law. The institution is placed Under the supervision of the Minister in charge of emerging enterprises, it has legal personality and financial independence, and its headquarters are in Algeria.<sup>13</sup>

### 2.2.2. Tasks of the Foundation for Promoting and Managing Support Structures for Emerging Enterprises

The Foundation is considered a tool for public authorities to implement the national policy to promote and manage support structures for

12 Articles 21 to 31 of Executive Decree No. 20-254 include the establishment of a national committee to grant the label "emerging enterprise", "innovative project", and "business incubator", and determine its tasks, composition, and functioning. *Ibid.*

13 Executive Decree No. 20-356 (2020, November 30), which includes the establishment of an institution for the promotion and management of support structures for emerging enterprises and defines its tasks, organization and functioning, G.R. No. 73.

emerging enterprises, especially incubators, accelerators, and innovation development. The Foundation undertakes the following tasks:

- Participate in implementing the national strategy in the field of promoting and managing support structures for emerging enterprises according to each field of activity.
- Participate in establishing new structures to enhance national capabilities in the field of accompanying innovation, stimulate the creation of emerging institutions, and contribute to economic and social development.
- Preparing and implementing annual and multi-year programs to develop incubators and accelerators for emerging institutions in cooperation with various relevant stakeholders and ensuring their follow-up and evaluation.
- Preparing and implementing acceleration approaches that ensure the follow-up of institutions bearing the “Emerging Enterprise” label and innovative projects bearing the “Innovative Project” label, as well as assessing their needs and approving that.
- Encouraging and supporting every initiative aimed at promoting and developing innovation and support structures in consultation with various sectors of activity.
- Contributing to technological vigilance and ensuring the publication and distribution on various media of all information related to technological innovation and entrepreneurship.
- Managing the properties allocated to it and acquired for exploitation.
- Preparing and following up on efficiency contracts for the services provided by the support structures placed under its responsibility, ensuring their respect and ensuring harmony and coordination among them.<sup>14</sup>

## CONCLUSION

Emerging institutions are one of the new concepts in the Algerian legal system, as Algeria has shown, since 2020, a new trend that appears promising through the establishment of emerging institutions, starting with the development of a new legal and legislative framework, to creating a new economic model away from the rentierism on which the country's economy has relied for decades, and thus investment and startups have become priorities for Algerian economic decision-makers, to contribute to advancing development and strengthening the local production machine.

Accordingly, after studying the legal system for emerging enterprises, this study produced a set of results and recommendations as follows:

- Emerging institutions are considered an essential pillar for building the national economy.
- It is necessary to reconsider the legal definition of startup companies so that it is more precise and clearer, especially concerning what is meant by an innovative project and high growth, and also to make it more comprehensive and expansive and not ration it with a specific size of business number and number of users.
- Providing appropriate infrastructure and assistance in establishing these projects.
- Creating a digital platform to eliminate the obsession with bureaucracy and the like.
- Providing a suitable climate in the government's strategies to attract emerging Algerian enterprises located abroad to develop the national economy.

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14 Article 4 of Executive Decree No. 20-356, which includes the establishment of an institution for the promotion and management of support structures for emerging enterprises and defines its tasks, organization, and operation, op. cit.

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